

United States District Court

MIDDLE

DISTRICT OF PENNSYLVANIA

ANTHONY BRAXTON

APPLICATION TO PROCEED IN
FORMA PAUPERIS, SUPPORTING
DOCUMENTATION AND ORDER

v.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CASE NUMBER:

C 7MP

I, ANTHONY BRAXTON # 10848-067, declare that I am the (check appropriate box)☐ petitioner/plaintiff☒ movant (filing 28 U.S.C. 2255 motion)☐ respondent/defendant☐

other

Per MARY E. BANGS, CLERK
DEPUTY CLERKFILED
HARRISBURG

AUG 16 2006

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

INEFFECTIVE ASSISTANCE OF COUNSEL

DENIAL OF RIGHT TO APPEAL

In further support of this application, I answer the following questions.

1. Are you presently employed?

Yes ☒ No ☐

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)

5000 DOLLARS PER MONTH

FORT FORT DIX, FORT DIX NEW JERSEY

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or other form of self-employment

Yes ☐ No ☒

b. Rent payments, interest or dividends?

Yes ☐ No ☒

c. Pensions, annuities or life insurance payments?

Yes ☐ No ☒

d. Gifts or inheritances?

Yes ☐ No ☒

e. Any other sources?

Yes ☒ No ☐

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FBI/DOJ CENTER

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

GODFATHER \$500.00 IN PAST 12 MONTHS. SON'S MOTHER \$150.00 IN PAST 12 MONTHS

3. Do you own any cash, or do you have money in checking or savings accounts?

Yes ☒ No ☐ (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☐ No ☒

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

NONE

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/8/2006
(Date)

Anthony Braxton
Signature of Applicant

CERTIFICATE

(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$ \$7.28 on account to his credit at the FCI Ft. Dix institution where he is confined. I further certify that the applicant likewise has the following securities to his credit according to the records of said institution: N/A

I further certify that during the last six months the applicant's average balance was \$ 90.74

Hebra A. Simon
Authorized Officer of Institution

ORDER OF COURT

The application is hereby denied.

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

United States Judge

Date

United States Judge
or Magistrate

Date

Affidavit In Support of Motion

FILED
HARRISBURG
AUG 16 2006
MARY E. BIANDELLA, CLERK
Per: AAA DEPUTY CLERK

On June 2nd, 2002, I was in the courtroom of the Honorable Judge W. Caldwell for the purpose of sentencing. I fully expected to receive a 5 K1.1 downward departure resulting in a sentence of less than 10 years in exchange for the substantial assistance and testimony I had provided at the trial of two co-defendants and in keeping with the terms of my plea agreement as explained to me by my court-appointed attorney, Mr. David Pell.

Despite the fact both my attorney and the U.S. Attorney had assured me if I provided substantial assistance as specified in my P.I.I., and testified at trial, I would benefit from a downward departure, at my sentence hearing Mr. Pell suddenly informed me the U.S. Attorney had decided not to file for the downward departure on my behalf but had deferred the possibility of that for a later date.

At my sentencing, Mr. Pell did put in the record he was reserving my right to file a *Santabello vs. New York* motion seeking specific performance should the U.S. Attorney fail to file a downward motion on my behalf within one year. Simultaneously, Mr. Pell declined my suggestion he immediately make a separate, direct appeal on my behalf, as he had previously agreed to do, since he now expected to file a *Santabello vs. New York* motion instead.

Subsequently, on February 18, 2004, during a visit with me, Mr. Pell indicated he was reluctant to file the *Santabello* motion since (1) he was not being paid by the District Court for this additional work and (2) if I lost the appeal the U.S. Attorney might revoke my plea agreement and I could be given even more time.

When I asked Mr. Pell to research whether the U. S. Attorney could revoke the plea agreement legally under such a circumstance, he refused claiming he wouldn't be compensated for that additional work. He asked that I decide on my own within a few days whether or not he should proceed to file the *Santabello* motion after which time he would close my file.

Mr. Pell's failure to file a direct motion at the time of my sentencing and his subsequent refusal to do what seemed to be legitimate research, I believe constituted unprofessional and unethical conduct as a result of which I have been denied effective assistance of counsel and any chance at direct appeal.

Anthony Buxton